

142 FERC ¶ 61,053
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
Cheryl A. LaFleur, and Tony T. Clark.

H.Q. Energy Services (U.S.), Inc.

v.

Docket No. EL13-25-000

ISO New England, Inc.

ORDER ON COMPLAINT

(Issued January 18, 2013)

1. On November 28, 2012, H.Q. Energy Services (U.S.), Inc. (HQUS) filed a complaint, pursuant to section 206 of the Federal Power Act,¹ challenging ISO New England, Inc.'s (ISO-NE) decision to disqualify certain of HQUS's capacity resources from ISO-NE's seventh Forward Capacity Auction (FCA 7). In this order, we will dismiss HQUS's complaint as moot.

I. Background and Complaint

2. Pursuant to its Transmission, Markets and Services Tariff (Tariff), ISO-NE operates a Forward Capacity Market (FCM), in which capacity resources compete in an annual FCA to provide capacity to New England three years in advance of the relevant Capacity Commitment Period; providers whose capacity clears the FCA acquire Capacity Supply Obligations, which they must fulfill three years later.² Prior to each FCA, ISO-NE conducts a qualification process for determining which resources may participate in the FCA and then issues Qualification Determination Notices (QDNs) notifying resources as to whether they were accepted or rejected. ISO-NE must also submit an informational filing with the Commission, reflecting, among other things, the qualification results.

¹ 16 U.S.C. § 824e (2006).

² FCA 7 for the 2016-2017 Capacity Commitment Period will begin on February 4, 2013.

3. As stated in the complaint, in preparation for FCA 7, HQUS timely requested that ISO-NE qualify the capacity from certain generation resources—Project IDs 11392 and 11393 (together, HQ-NY capacity)—located in the Hydro Quebec Control Area (HQCA) and wheeled to New England through the New York Control Area (NYCA). In response to HQUS’s request, ISO-NE sought additional information regarding the HQ-NY capacity’s transmission path through the NYCA, and whether the capacity from these resources would be deliverable to New England. HQUS timely responded to the information requests by completing the requested forms and answering ISO-NE’s questions. In its responses, HQUS explained that its capacity is backed by the system power in the HQCA, that HQUS purchases firm transmission service from New York Independent System Operator (New York ISO), and that New York ISO has committed to taking the necessary steps to ensure delivery of energy associated with inter-control area capacity transactions.

4. On September 28, 2012, ISO-NE issued the QDNs for FCA 7, entirely disqualifying the HQ-NY capacity. In its November 6, 2012 Informational Filing for FCA 7, submitted in Docket No. ER13-335-000, ISO-NE explained that certain import resources were disqualified because they did not sufficiently explain how they would ensure deliverability given internal transmission constraints within New York.

5. Both here and in its protest submitted in Docket No. ER13-335-000, HQUS alleges that ISO-NE violated its Tariff³ by improperly disqualifying the HQ-NY capacity, and that, should the Commission find no such violation, ISO-NE’s Tariff provisions governing these import resources are unjust and unreasonable.⁴ HQUS requests that the Commission require ISO-NE to revise its Tariff to make clear that ISO-NE has the “burden to show that it needs to change its standards for determining deliverability for import capacity resources.”⁵ If such a Tariff revision cannot be completed in time for the HQ-NY capacity to participate in FCA 7, HQUS alternatively requests that the Commission deem the HQ-NY capacity qualified⁶ or waive the QDN deadline to allow HQUS the opportunity to address ISO-NE’s concerns.⁷

³ HQUS cites section III.13.1.3.5.3.1 of ISO-NE’s Market Rule 1(Tariff) as the operative Tariff provision governing deliverability of the HQ-NY capacity. ISO-NE, Transmission, Markets and Services Tariff, § III.13.1.3.5.3.1 (12.0.0).

⁴ HQUS November 28, 2012 Complaint at 22.

⁵ *Id.* at 27.

⁶ *Id.*

⁷ *Id.* at 19.

6. NEPOOL asserts that any modifications to ISO-NE's Tariff should be made only through the stakeholder process, or else New England stakeholders will be denied the opportunity to participate.

II. Notice of Filing and Responsive Pleadings

7. Notice of the filing was published in the *Federal Register*, 77 Fed. Reg. 72,846 (2012), with interventions and protests due on or before December 21, 2012. Timely filed motions to intervene were filed by Exelon Corporation, and New England Power Pool Participants Committee (NEPOOL).

8. On December 6, 2012, ISO-NE filed its answer.⁸ On December 19, 2012, HQUS filed an answer to ISO-NE's answer. On December 21, 2012, NEPOOL filed an answer.

9. ISO-NE explains that, based on the additional information received since the QDNs were issued, it is now possible to qualify certain resources that were previously disqualified, including HQUS's and all import resources from the New York Control Area.⁹ Accordingly, ISO-NE requests that the Commission waive the QDN deadline to give these resources the opportunity to participate in FCA 7.¹⁰ ISO-NE states that, if the Commission waives the QDN deadline, ISO-NE will qualify any of the identified resources that properly submit a financial assurance deposit within five days of the Commission's order.¹¹

10. In response to ISO-NE's answer, HQUS states that if the Commission grants waiver of the QDN deadline in Docket No. ER13-335-000, HQUS would no longer need to pursue its complaint in the instant docket because its concerns would be satisfied. However, HQUS asserts that if the Commission does not grant ISO-NE's waiver request, then HQUS will continue to pursue the allegations in its complaint.

⁸ ISO-NE combined its answer here with its answer to HQUS's protest submitted in Docket No. ER13-335-000.

⁹ *Id.* at 10.

¹⁰ *Id.* at 11.

¹¹ *Id.*

III. Discussion

A. Procedural Matters

11. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2012), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

12. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2012), prohibits an answer to a protest and an answer to an answer unless otherwise ordered by the decisional authority. We will accept the answer filed by HQUS because it assisted us in our decision-making process.

B. Commission Determination

13. We will dismiss as moot HQUS's complaint. Concurrently with this order, the Commission, in Docket No. ER13-335-000, grants waiver of the QDN deadline and allows HQUS the opportunity to qualify for FCA 7 by promptly submitting the requisite financial assurance deposit to ISO-NE.¹² HQUS here states that granting such waiver will resolve its complaint. Accordingly, we need not address HQUS's request for compulsory qualification in the instant proceeding and will dismiss HQUS's complaint.¹³

The Commission orders:

HQUS's complaint is hereby dismissed as moot, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

¹² *ISO New England, Inc.*, 142 FERC ¶ 61,051 (2013).

¹³ We note that, as stated in its answer, ISO-NE intends to pursue revisions and clarification of the FCA qualification process through the stakeholder process. HQUS can raise any concerns at that time, and we will not prejudge potential revisions here.